

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

LOCAL No. 951, UNITED FOOD AND  
COMMERCIAL WORKER INTERNATIONAL  
UNION, AFL-CIO, CLC (Rite Aid Corporation)

and

Case 7-CB-13824

MILDRED LEWIS, An Individual

**Steven A. Carlson, Esq.**, for the General Counsel  
**Jonathan D. Karmel, Esq.**, for the Respondent

BENCH DECISION

Jane Vandeventer, Administrative Law Judge. This case was tried on August 3 and 4, 2004, in Grand Rapids, Michigan. On August 4, 2004, after hearing oral arguments by counsel, I issued a Bench Decision pursuant to Section 102.35(a)(10) of the National Labor Relations Board's Rules and Regulations, setting forth findings of fact and conclusions of law.

I certify the accuracy of the portion of the transcript, as corrected,<sup>1</sup> pages 215 to 227, containing my Bench Decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Dated, Washington, D.C., August 27, 2004.

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**Jane Vandeventer**  
Administrative Law Judge

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<sup>1</sup> I have corrected the transcript containing my Bench Decision, and the corrections are reflected in the attached Appendix B.

APPENDIX B

| <b>Page and<br/>Line(s)</b> | <b>Correct</b>                  | <b>To</b>     |
|-----------------------------|---------------------------------|---------------|
| 215:7                       | 8(b)(1)                         | 8(b)(1)(A)    |
| 215:15                      | finding                         | findings      |
| 217:7                       | This                            | In this       |
| 218:7                       | prescription                    | prescriptions |
| 218:20                      | go a                            | go to a       |
| 220:4                       | meetings                        | meeting       |
| 220:24                      | was                             | were          |
| 223:3                       | ever                            | every         |
| 223:14                      | imminently                      | eminently     |
| 224:22                      | Union on                        | Union, from   |
| 225:25                      | Delete "in which – a grievance" |               |
| 226:12                      | terminative                     | determinative |
| 227:3                       | 8(b)(1)                         | 8(b)(1)(A)    |

## APPENDIX A

### DECISION Statement of the Case

This case was tried on August 3 and 4, 2004 in Grand Rapids, Michigan. The Complaint alleges that the Respondent violated Section 8(b)(1)(A) of the Act by failing to pursue to arbitration a grievance filed by the Charging Party. The Respondent filed an Answer denying the essential allegations in the Complaint. After the conclusion of the evidence, the parties made oral arguments, which I have considered.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following findings of fact.

#### Findings of Fact

##### I. Jurisdiction

Rite Aid Corporation, herein called Rite Aid or the Employer, is a corporation with headquarters in Camp Hill, Pennsylvania. The Employer has been engaged in the retail sale of pharmaceutical products and other consumer goods at various facilities located within the state of Michigan, including a facility located at 5995 Kalamazoo Avenue, Kentwood, Michigan.

During a representative one-year period, the Employer derived gross revenues in excess of \$500,000.00 and purchased

and received at its various facilities located within the state of Michigan, including its Kalamazoo Avenue store, goods valued in excess  
5 of \$50,000.00 directly from points outside the state of Michigan.

Accordingly, I find, as Respondent admits, that the Employer is an employer engaged in commerce within the meaning of Section 2(2),(6),  
10 and (7) of the Act.

The Respondent Union is a labor organization within the meaning  
15 of Section 2(5) of the Act.

## II. Unfair Labor Practices

### A. The Facts

20 Respondent represents some 30,000 employees, primarily employees employed in retail stores, including grocery stores  
25 and drug store chains such as the Employer. Its collective bargaining agreement with the Employer includes a grievance and arbitration procedure. The contract also provides that management retains the  
30 right to make rules in the workplace and to discharge or discipline employees for violation of those rules. There is also an agreement  
35 that employees will be discharged only for just cause.

The Charging Party, Mildred Lewis, was employed by Rite Aid as a Pharmacy Technician. At the time of her discharge on August  
40 6<sup>th</sup>, 2002, she had worked for the Employer for 15 years. At that time, she worked at a Rite Aid store located at 60<sup>th</sup> Avenue and Kalamazoo Avenue, called by the Employer, Store 4242.  
45

On the same day she was discharged, Lewis sought Respondent's help. She called the Business Representative assigned to her store,  
50 Matt Radke, and told him that she had been discharged, as well as some of the facts surrounding the incident. Radke filed a grievance on

Lewis' behalf the same day.

In this initial phone conversation and in other conversations  
5 with Lewis, Radke learned the facts that she knew. Previously, Lewis  
had had a few disagreements with her immediate supervisor, the  
Pharmacy Manager. She had also had chest pains which prompted her to  
10 seek medical assistance. Her doctor had prescribed a medicine called  
Naprosyn for her stress induced pains. The prescription the doctor  
15 had given her had been filled and was at that time in the store's  
basket of prescriptions which were ready to be picked up. Lewis had  
not yet paid for the medication or picked it up.

20 Lewis told Radke that a day or so before her discharge, she had  
become upset while at work and felt the need of her medication. Lewis  
found her prescription in the ready basket, took out a couple of  
25 pills, and replaced the remainder of the medicine in the ready basket.

A day or two later, on August 6<sup>th</sup>, Lewis was challenged by the  
30 Employer's security personnel who told her she had been seen taking  
the medication out of the ready basket and that a video tape of the  
incident existed. Lewis admitted taking two pills and gave the  
35 Employer a written statement to that effect. She was then discharged  
for theft of product.

40 Lewis told Radke these things and also told him that at the  
Employer's Michigan Avenue store, where she had worked before going to  
Store 4242, the Pharmacy Manager there had  
45 permitted employees to take a dose of medication from their own  
prescriptions if they didn't have money to pay for the prescription,  
50 and they could then pay for it on their next payday. She gave him the  
Pharmacy Manager's name, which was Joe Bristol, as well as the name

of another witness.

Radke testified that he had difficulty contacting Bristol despite  
5 repeated calls and asked Lewis to call Bristol and request him to  
accept a call from Radke. Shortly after this, Radke succeeded in  
reaching Bristol.

10 At the time of his phone call to Bristol, Bristol was not  
employed by Rite Aid. Radke testified that Bristol confirmed that he  
15 had allowed Lewis to take medicine she had not yet purchased and added  
that certain customers were also treated this way. Radke testified  
that he asked Bristol if he would give a written statement or go to a  
20 grievance meeting to tell these facts, but that Bristol refused to  
do either one. According to Radke, Bristol refused to allow Radke to  
25 tape the phone conversation either.

Joe Bristol also testified that he told Radke about his  
permission to Lewis to take medicine out of a prescription

before paying for it. He testified that he also allowed Medicaid customers to take medicine before paying for it. In his testimony, Bristol said he did not recall anything else about the phone conversation. Bristol has since returned to work at the Michigan Avenue Rite Aid Store as a Pharmacist and testified that the practice he described still goes on at that store.

I find that there is no real conflict in the testimony of Radke and Bristol. Bristol did not deny refusing to give a written statement or appear at a grievance meeting. He simply didn't recall anything about it.

To the extent that there is any conflict between the testimony of Radke and Bristol, I credit Radke. He testified clearly and forthrightly. He demonstrated a good memory of the events even though he had no notes to rely upon. Bristol, on the other hand, was vague in his testimony and his demeanor, remembered things incompletely, and overall showed a poor memory for the events.

Radke discussed Lewis' grievance with his supervisors, Phyllis Smith and Dawn Kulesza, and his fellow Business Representatives and followed up on other avenues of investigation. He talked with four other employees at Store 4242 and with the store manager there. From them he learned that the custom described by Bristol was not followed at Store 4242 and that employees there were not permitted to take

medication before paying for their prescriptions.

Radke talked on the phone with the Employer's Human Relations Representative and set up a meeting for the final grievance meeting short of arbitration. It is undisputed that the Employer maintained a written rule citing acts of dishonesty and theft as causes for discipline or discharge.

Another written policy of the Employer states, "Taking merchandise without paying for it for yourself or others is illegal and grounds for discharge and prosecution."

The final grievance meeting with the Employer was held on October 2<sup>nd</sup>, 2002. Radke, Lewis, and another of Respondent's Business Representatives attended, as well as several Employer representatives. The Employer presented its position and facts, and Respondent did the same.

The Employer rejected the notion that Lewis or any employee had legitimate permission to take medication before paying for the prescription and specifically stated that any such permission would not in any case extend to a different store with a different manager. The Employer's presentation alerted the Respondent to several things the Employer intended to use to support its position and to undermine the Union's claim of a limited exception for Ms. Lewis such as the Employer's assertion that more than one or two doses of the medication in question were missing and that Lewis' prescription was older than just a few days at the time of her discharge and should have been paid for by then even under the Union's claim of permission.

Before ending the meeting, the two Business Representatives checked with Lewis and then added in the meeting -- added to their



presentation the items she wished them to add.

Later that day, after the meeting was over, Radke was informed by  
5 the Employer's representative that the grievance was being denied by  
the Employer. Radke talked the Lewis grievance over with his  
supervisor and other Business Representatives. With them, Radke  
10 reviewed the things that had been found so far during the  
investigation and added the Company's position as revealed to him in  
the meeting earlier that day and the Company's assertions that they  
15 had made in the grievance meeting.

Another factor that was discussed was the great difficulty in  
20 winning any discharge grievance where theft was the reason for the  
discharge. It was the consensus of the Business Representatives and  
the supervisor that Respondent would be unable to win this grievance  
25 in arbitration. Radke, therefore, decided not to pursue the grievance  
to arbitration. He informed Lewis of this by letter.

30 Lewis appealed the decision. Her appeal to the Respondent's  
Executive Board Appeals Committee was heard on January 15, 2003.  
Lewis presented her appeal, and a union  
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official presented the Union's reasons for its decision. The Appeals Committee, composed of rank and file members who had been elected to the Union's Executive Board, voted to deny Lewis' appeal.

B. Positions of the Parties

The General Counsel relies upon the pattern of conduct cases which hold that a union may violate its duty of fair representation by conduct which is so unreasonable, perfunctory, and/or irrational as to amount to arbitrary conduct. In support of this theory, the General Counsel argues Respondent violated the duty of fair representation because Radke concealed or misrepresented the willingness of a witness, Bristol, to assist the grievance investigation and presentation.

The General Counsel's theory of the case does not allege that Respondent violated its duty of fair representation by refusing to process and arbitrate Lewis' grievance because of discriminatory reasons such as non-membership in Respondent, internal political opposition, race or sex discrimination, or other such invidious forms of discrimination.

Respondent argues it has not violated the duty of fair representation implied in Section 8(b)(1)(A) because it made a good faith decision based on reasons grounded in the collective bargaining agreement not to arbitrate Lewis' grievance, and its actions and investigation were well within the wide range of

reasonableness granted to unions in the discharge of their representative duties. Respondent contends the Union is not required to arbitrate every grievance even if meritorious. Respondent asserts there was no showing of bad faith or discrimination on its part, and further argues Lewis' grievance was clearly non-meritorious.

### C. Discussion and Analysis

#### 1. The Duty of Fair Representation

The duty of fair representation is a judicially created doctrine which assumes that a union which has the status of exclusive representative of a group of employees owes those employees a duty to represent them fairly. The first Board case which so held was Miranda Fuel Co., 140 NLRB 181 (1962). While this sounds a simple and eminently reasonable proposition, it has been the subject of countless refinements in cases decided by the Board and the federal courts. The duty applies to a union's conduct in the area of collective negotiations, grievance handling, including settlement and arbitration, and fiscal management, among others. See, e.g. Air Line Pilots Assn. V. O'Neill, 499 U.S. 65, 67 (1991); Teamsters Local 814 (Beth Israel Medical), 281 NLRB 1130, 1146- 47 (1986); Teamsters Local 101 (Allied Signal), 308 NLRB 140, 143 (1992); and Furniture Workers Local 76B (Office Furniture), 290 NLRB 51, 62-63 (1988).

The degree of rigor assigned to the duty must take into

account the Union's duty to represent the entire bargaining unit as well as individuals. It has been recognized that in order to perform its representative functions effectively, a union must be allowed a wide range of reasonableness in its conduct and decision-making. Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953).

5 With specific reference to grievance handling, the standard of conduct is that of a good faith evaluation of the grievance and a rational reason for the decision. Pacific Maritime Assn., 321 NLRB 822, 823-24 (1996); and Teamsters Local 337 (Swift-Eckrich), 307 NLRB 437, 438, 440 (1992).

10 Some cases in which a Union first undertakes to process a grievance and later drops it or decides not to arbitrate the grievance, in those cases the merits of the grievance are not the  
15 issue, assuming the grievance is more than frivolous. Instead, the finding of a violation turns on whether the union's disposition of the grievance was perfunctory or motivated by ill will or other  
20 invidious considerations. Glass Bottle Blowers Local 106 (Owens-Illinois), 240 NLRB 324 (1979).

25 In assessing the conduct of the Respondent in handling this grievance, the proper focus is the total conduct of the Union, from its dealings with the grievant, to its investigation, to its dealings  
30 with the Employer, to its decisions, and its decision-making procedures. Here, Respondent promptly filed a grievance, investigated the facts by talking to the grievant,  
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by talking to the principal witness relied on by the grievant, by talking with other potential witnesses who might have knowledge, by discussing the grievance with the Company in a timely manner, by discussing the grievance among the Business Representatives and supervisors, and by presenting its best case to the Company.

When the Company denied the grievance, Respondent then decided, based on all the evidence it could present favoring the grievant and all the factors favoring the Employer's case, that it was unlikely to prevail in arbitration and so would not arbitrate the grievance. An Appeals Committee ratified this decision of the Business Representative.

The Respondent reasoned that the Employer could present evidence that it had a clear written rule which the grievant admitted violating. The Union could attempt to show that the grievant believed that there was an exception or that she had permission to violate this rule, but the Respondent also knew that the Employer could show that this permission or exception, even if shown, differed in time and differed in the store location, and was under a different supervisor than the current store that the discharge occurred in. In addition, the Union would be unable to show that the exception or permission was known to or sanctioned by the Company other than at the Michigan Avenue store. In addition, the Respondent had never won a grievance arbitration in which

theft was the reason for the discharge of the grievant.

I find that the Respondent's handling of the grievance was well within the wide range of reasonableness that the Supreme Court has set

as a standard. There is in this record no evidence of Bristol's willingness to assist the investigation any farther than by talking on the phone with a Business Representative. There is in this record no evidence of any concealment of Bristol's alleged willingness to assist the investigation by Radke.

Finally, there is no showing that this single factor had any weight at all in the Union's decision, much less determinative weight. I find that the General Counsel's emphasis on this single fact in the whole totality of the grievance handling is misplaced. Furthermore, a union is entitled to weigh the likelihood of success on the merits of a grievance while deciding whether or not to take the grievance to arbitration.

Accordingly, and based on all the foregoing and the evidence in the case, I will recommend to the Board that the Complaint be dismissed in its entirety.

#### Conclusions of Law

1. Respondent, Local 951, United Food and Commercial Workers International Union, AFL-CIO-CIC, is a labor organization within the meaning of 2(5) of the Act.

2. Rite Aid Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent has not violated Section 8(b)(1)(A) of the Act as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

#### ORDER

The Complaint is dismissed in its entirety.

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**APPENDIX A**

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**DECISION  
Statement of the Case**

This case was tried on August 3 and 4, 2004 in Grand Rapids,  
Michigan. The Complaint alleges that the Respondent violated Section  
8(b)(1)(A) of the Act by failing to pursue to arbitration a grievance  
filed by the Charging Party. The Respondent filed an Answer denying  
the essential allegations in the Complaint. After the conclusion of  
the evidence, the parties made oral arguments, which I have  
considered.

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Based on the testimony of the witnesses, including particularly  
my observation of their demeanor while testifying, the documentary  
evidence, and the entire record, I make the following findings of  
fact.

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**Findings of Fact****I. Jurisdiction**

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Rite Aid Corporation, herein called Rite Aid or the Employer, is  
a corporation with headquarters in Camp Hill, Pennsylvania. The  
Employer has been engaged in the retail sale of pharmaceutical  
products and other consumer goods at various facilities located within  
the state of Michigan, including a facility located at 5995 Kalamazoo  
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5 of \$50,000.00 directly from points outside the state of Michigan.

Accordingly, I find, as Respondent admits, that the Employer is an employer engaged in commerce within the meaning of Section 2(2),(6),  
10 and (7) of the Act.

The Respondent Union is a labor organization within the meaning  
15 of Section 2(5) of the Act.

## II. Unfair Labor Practices

### A. The Facts

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25 and drug store chains such as the Employer. Its collective bargaining agreement with the Employer includes a grievance and arbitration procedure. The contract also provides that management retains the  
30 right to make rules in the workplace and to discharge or discipline employees for violation of those rules. There is also an agreement  
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40 6<sup>th</sup>, 2002, she had worked for the Employer for 15 years. At that time, she worked at a Rite Aid store located at 60<sup>th</sup> Avenue and Kalamazoo  
45 Avenue, called by the Employer, Store 4242.

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50 Matt Radke, and told him that she had been discharged, as well as some of the facts surrounding the incident. Radke filed a grievance on

Lewis' behalf the same day.

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5 with Lewis, Radke learned the facts that she knew. Previously, Lewis  
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found her prescription in the ready basket, took out a couple of  
25 pills, and replaced the remainder of the medicine in the ready basket.

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35 Employer a written statement to that effect. She was then discharged  
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prescriptions if they didn't have money to pay for the prescription,  
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Pharmacy Manager's name, which was Joe Bristol, as well as the name

of another witness.

Radke testified that he had difficulty contacting Bristol despite  
5 repeated calls and asked Lewis to call Bristol and request him to  
accept a call from Radke. Shortly after this, Radke succeeded in  
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I find that there is no real conflict in the testimony of Radke and Bristol. Bristol did not deny refusing to give a written statement or appear at a grievance meeting. He simply didn't recall anything about it.

To the extent that there is any conflict between the testimony of Radke and Bristol, I credit Radke. He testified clearly and forthrightly. He demonstrated a good memory of the events even though he had no notes to rely upon. Bristol, on the other hand, was vague in his testimony and his demeanor, remembered things incompletely, and overall showed a poor memory for the events.

Radke discussed Lewis' grievance with his supervisors, Phyllis Smith and Dawn Kulesza, and his fellow Business Representatives and followed up on other avenues of investigation. He talked with four other employees at Store 4242 and with the store manager there. From them he learned that the custom described by Bristol was not followed at Store 4242 and that employees there were not permitted to take

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The Employer rejected the notion that Lewis or any employee had legitimate permission to take medication before paying for the prescription and specifically stated that any such permission would not in any case extend to a different store with a different manager. The Employer's presentation alerted the Respondent to several things the Employer intended to use to support its position and to undermine the Union's claim of a limited exception for Ms. Lewis such as the Employer's assertion that more than one or two doses of the medication in question were missing and that Lewis' prescription was older than just a few days at the time of her discharge and should have been paid for by then even under the Union's claim of permission.

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the Employer. Radke talked the Lewis grievance over with his  
supervisor and other Business Representatives. With them, Radke  
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investigation and added the Company's position as revealed to him in  
the meeting earlier that day and the Company's assertions that they  
15 had made in the grievance meeting.

Another factor that was discussed was the great difficulty in  
20 winning any discharge grievance where theft was the reason for the  
discharge. It was the consensus of the Business Representatives and  
the supervisor that Respondent would be unable to win this grievance  
25 in arbitration. Radke, therefore, decided not to pursue the grievance  
to arbitration. He informed Lewis of this by letter.

30 Lewis appealed the decision. Her appeal to the Respondent's  
Executive Board Appeals Committee was heard on January 15, 2003.

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official presented the Union's reasons for its decision. The Appeals Committee, composed of rank and file members who had been elected to the Union's Executive Board, voted to deny Lewis' appeal.

B. Positions of the Parties

The General Counsel relies upon the pattern of conduct cases which hold that a union may violate its duty of fair representation by conduct which is so unreasonable, perfunctory, and/or irrational as to amount to arbitrary conduct. In support of this theory, the General Counsel argues Respondent violated the duty of fair representation because Radke concealed or misrepresented the willingness of a witness, Bristol, to assist the grievance investigation and presentation.

The General Counsel's theory of the case does not allege that Respondent violated its duty of fair representation by refusing to process and arbitrate Lewis' grievance because of discriminatory reasons such as non-membership in Respondent, internal political opposition, race or sex discrimination, or other such invidious forms of discrimination.

Respondent argues it has not violated the duty of fair representation implied in Section 8(b)(1)(A) because it made a good faith decision based on reasons grounded in the collective bargaining agreement not to arbitrate Lewis' grievance, and its actions and investigation were well within the wide range of

reasonableness granted to unions in the discharge of their representative duties. Respondent contends the Union is not required to arbitrate every grievance even if meritorious. Respondent asserts there was no showing of bad faith or discrimination on its part, and further argues Lewis' grievance was clearly non-meritorious.

### C. Discussion and Analysis

#### 1. The Duty of Fair Representation

The duty of fair representation is a judicially created doctrine which assumes that a union which has the status of exclusive representative of a group of employees owes those employees a duty to represent them fairly. The first Board case which so held was Miranda Fuel Co., 140 NLRB 181 (1962). While this sounds a simple and eminently reasonable proposition, it has been the subject of countless refinements in cases decided by the Board and the federal courts. The duty applies to a union's conduct in the area of collective negotiations, grievance handling, including settlement and arbitration, and fiscal management, among others. See, e.g. Air Line Pilots Assn. V. O'Neill, 499 U.S. 65, 67 (1991); Teamsters Local 814 (Beth Israel Medical), 281 NLRB 1130, 1146- 47 (1986); Teamsters Local 101 (Allied Signal), 308 NLRB 140, 143 (1992); and Furniture Workers Local 76B (Office Furniture), 290 NLRB 51, 62-63 (1988).

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5 With specific reference to grievance handling, the standard of conduct is that of a good faith evaluation of the grievance and a rational reason for the decision. Pacific Maritime Assn., 321 NLRB 822, 823-24 (1996); and Teamsters Local 337 (Swift-Eckrich), 307 NLRB 437, 438, 440 (1992).

10 Some cases in which a Union first undertakes to process a grievance and later drops it or decides not to arbitrate the grievance, in those cases the merits of the grievance are not the  
15 issue, assuming the grievance is more than frivolous. Instead, the finding of a violation turns on whether the union's disposition of the grievance was perfunctory or motivated by ill will or other  
20 invidious considerations. Glass Bottle Blowers Local 106 (Owens-Illinois), 240 NLRB 324 (1979).

25 In assessing the conduct of the Respondent in handling this grievance, the proper focus is the total conduct of the Union, from its dealings with the grievant, to its investigation, to its dealings  
30 with the Employer, to its decisions, and its decision-making procedures. Here, Respondent promptly filed a grievance, investigated the facts by talking to the grievant,  
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by talking to the principal witness relied on by the grievant, by talking with other potential witnesses who might have knowledge, by discussing the grievance with the Company in a timely manner, by discussing the grievance among the Business Representatives and supervisors, and by presenting its best case to the Company.

When the Company denied the grievance, Respondent then decided, based on all the evidence it could present favoring the grievant and all the factors favoring the Employer's case, that it was unlikely to prevail in arbitration and so would not arbitrate the grievance. An Appeals Committee ratified this decision of the Business Representative.

The Respondent reasoned that the Employer could present evidence that it had a clear written rule which the grievant admitted violating. The Union could attempt to show that the grievant believed that there was an exception or that she had permission to violate this rule, but the Respondent also knew that the Employer could show that this permission or exception, even if shown, differed in time and differed in the store location, and was under a different supervisor than the current store that the discharge occurred in. In addition, the Union would be unable to show that the exception or permission was known to or sanctioned by the Company other than at the Michigan Avenue store. In addition, the Respondent had never won a grievance arbitration in which

theft was the reason for the discharge of the grievant.

I find that the Respondent's handling of the grievance was well within the wide range of reasonableness that the Supreme Court has set

as a standard. There is in this record no evidence of Bristol's willingness to assist the investigation any farther than by talking on the phone with a Business Representative. There is in this record no evidence of any concealment of Bristol's alleged willingness to assist the investigation by Radke.

Finally, there is no showing that this single factor had any weight at all in the Union's decision, much less determinative weight. I find that the General Counsel's emphasis on this single fact in the whole totality of the grievance handling is misplaced. Furthermore, a union is entitled to weigh the likelihood of success on the merits of a grievance while deciding whether or not to take the grievance to arbitration.

Accordingly, and based on all the foregoing and the evidence in the case, I will recommend to the Board that the Complaint be dismissed in its entirety.

#### Conclusions of Law

1. Respondent, Local 951, United Food and Commercial Workers International Union, AFL-CIO-CIC, is a labor organization within the meaning of 2(5) of the Act.

2. Rite Aid Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent has not violated Section 8(b)(1)(A) of the Act as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

#### ORDER

The Complaint is dismissed in its entirety.

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